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The situation in the occupied territories of Azerbaijan

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Letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the report entitled "Military occupation of the territory of Azerbaijan: legal assessment" (see annex).

With deep regret, I should like to state that a significant part of the territory of my country is still under occupation. Moreover — and this is a very unfortunate fact — the ceasefire is often violated by the Armenian armed forces. During the month of August alone, the positions of the Azerbaijani armed forces in the Goranboy, Tar-Tar, Aghdam, Khojavend, Fuzuli, Gazakh and Gadabay regions were shelled 165 times. I would specifically like to underline that the Gazakh and Gadabay regions are located beyond the line of contact, right on the border with Armenia.

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under item 20, and of the Security Council.

(*Signed*) Agshin **Mehdiyev**
Ambassador
Permanent Representative

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Annex to the letter dated 8 October 2007 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General

[Original: Russian]

Military occupation of the territory of Azerbaijan: a legal appraisal*

Essential facts

At the end of 1987, the Armenian Soviet Socialist Republic (SSR) openly laid claim to the territory of the Nagorny Karabakh Autonomous Region of the Azerbaijani SSR. That marked the beginning of the systematic expulsion of Azerbaijanis from the Armenian SSR and the Nagorny Karabakh Autonomous Region.

On 20 February 1988, at a meeting of the regional soviet of the Nagorny Karabakh Autonomous Region, Armenian representatives adopted a decision on petitioning the Supreme Soviets of the Azerbaijani SSR and the Armenian SSR for the Nagorny Karabakh Autonomous Region to be transferred from the Azerbaijani SSR to the Armenian SSR.[1] This decision set in motion determined actions by the Armenian authorities aimed at the unilateral secession of the Nagorny Karabakh Autonomous Region from the Azerbaijani SSR.

The first victims were two Azerbaijanis, killed by Armenians on 24 February 1988 near the town of Askeran in Nagorny Karabakh. On 28 February 1988, inter-ethnic clashes broke out in Sumqayit.

At a meeting of the Nagorny Karabakh regional soviet, held on 12 June 1988 without the participation of any Azerbaijani deputies, an unlawful decision was adopted on the withdrawal of the Nagorny Karabakh Autonomous Region from the Azerbaijani SSR.[2]

The Armenian SSR was also actively involved in efforts to legalize the separation of the Nagorny Karabakh Autonomous Region from the Azerbaijani SSR. The highest organ of State authority of the Armenian SSR — the Supreme Soviet — adopted a number of decisions that violated the Constitution, the most notorious of which was the resolution of 1 December 1989 on the "reunification of the Armenian SSR and Nagorny Karabakh". This document made provision for the adoption of all the necessary measures for the amalgamation of the political, economic and cultural structures of the Armenian SSR and Nagorny Karabakh into a single State political system.[3]

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* The present document has been prepared by the Centre for Strategic Studies of the Ministry of Foreign Affairs of the Azerbaijani Republic.

[1] See Vaan Arutunyan. *Sobytiya v Nagornom Karabakhe: Khronika* (*Events in Nagorny Karabakh: Chronicle*), part 1, February 1988-January 1989 (Yerevan, Academy of Sciences of the Armenian SSR, 1990), p. 38.

[2] Decision of the eighth meeting of the twentieth convocation of the Soviet of People's Deputies of the Nagorny Karabakh Autonomous Region proclaiming the withdrawal of the Nagorny Karabakh Autonomous Region from the Azerbaijani SSR, 12 July 1988; see Vaan Arutunyan, pp. 113-115.

[3] Resolution of the Supreme Soviet of the Armenian SSR on the reunification of the Armenian SSR and Nagorny Karabakh, 1 December 1989. *Kommunist* newspaper, 2 December 1989.

The proclamation on 2 September 1991 of the "Nagorny Karabakh Republic" and the declaration of this territorial entity as an "independent State", based on the outcome of a referendum held on 10 December, marked the next step in efforts to legitimize the separation of the Nagorny Karabakh Autonomous Region from Azerbaijan.

The collapse of the USSR finally freed the hands of the Armenian nationalists. Over the period 1992-1993 a considerable area of Azerbaijan was occupied, including Nagorny Karabakh and seven adjacent districts. The resulting war unleashed against Azerbaijan led to the deaths and wounding of thousands of people; hundreds of thousands became refugees and were forcibly displaced and several thousand disappeared without trace.

Collapse of the USSR and legitimization of borders

All the decisions taken with a view to separating Nagorny Karabakh from Azerbaijan ran counter to the Constitution of the Union of Soviet Socialist Republics, which stipulated that the territory of a Union republic could not be altered without its consent, while the borders between Union republics could be altered by mutual agreement of the republics concerned, subject to ratification by the Union of Soviet Socialist Republics.[4]

The Nagorny Karabakh Autonomous Region remained in existence until 26 November 1991, when, pursuant to an act adopted by the Supreme Council of the Republic of Azerbaijan, the autonomous region was abolished as a territorial entity of the country.[5] Until the full restoration of State independence of the Republic of Azerbaijan and its recognition by the international community, Nagorny Karabakh continued to form part of Azerbaijan, and any actions intended to secure the unilateral separation of this region were without legal consequence.

Shortly after the Soviet Union ceased to exist, its former constituent republics were accorded de jure recognition by the international community. The moment the Republic of Azerbaijan gained independence, the former administrative borders of the Azerbaijani SSR, which also encompassed the Nagorny Karabakh Autonomous Region, were deemed henceforth to be international borders and to be protected under international law (*uti possidetis juris*). This tenet is also unequivocally and unconditionally upheld in resolutions of the United Nations Security Council relating to the conflict between Armenia and Azerbaijan.[6] As pointed out by David Atkinson, rapporteur on the Karabakh conflict for the Parliamentary Assembly of the Council of Europe (PACE), "the borders of Azerbaijan were internationally recognized at the time of the country being recognized as an independent State in 1991", the territory of which "included the Nagorno-Karabakh region".[7] Under the rules of international law on State succession, Azerbaijan also inherited the

[4] USSR Constitution (Moscow, 1977), p. 13, art. 78.

[5] Nagorny Karabakh Autonomous Region of the Republic of Azerbaijan (Abolition) Act, 26 November 1991. Gazette of the Supreme Council of the Republic of Azerbaijan, 1991, No. 24, pp. 77 and 78.

[6] Security Council resolutions 822 (1993) of 30 April 1993, 853 (1993) of 29 June 1993, 874 (1993) of 14 October 1993 and 884 (1993) of 11 November 1993.

[7] Report of the Political Affairs Committee of the Parliamentary Assembly of the Council of Europe. Document 10364, 29 November 2004. Explanatory Memorandum by the Rapporteur, part III, para. 5.

corresponding sectors of the frontiers of the former USSR with Iran and Turkey, which had been established on the basis of international treaties concluded between the USSR and those States.

Prohibition under international law of the forcible seizure of a territory

The Charter of the United Nations proclaims as one of the purposes of the United Nations the maintenance of international peace and security and, to that end, the taking of effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and the bringing about by peaceful means, and in conformity with the principles of justice and international law, of adjustment or settlement of international disputes or situations which might lead to a breach of the peace.[8]

Pursuant to Article 2, paragraph 4, of the Charter, States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Charter of the United Nations.[9]

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 24 October 1970 stipulates that a "war of aggression constitutes a crime against the peace, for which there is responsibility under international law". In addition, under the Declaration, "[e]very State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States".[10]

Attention is also drawn to the Declaration's conclusion that the "territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter" and, accordingly, that "[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal".[11] This position is also upheld in the Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations of 18 November 1987, which stipulates that "[n]either acquisition of territory resulting from the threat or use of force nor any occupation of territory resulting from the threat or use of force in contravention of international law will be recognized as legal acquisition or occupation".[12]

As the International Court of Justice established in its judgment in the *Military and Paramilitary Activities in and against Nicaragua* case, principles relating to the

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[8] Charter of the United Nations, 26 June 1945 (New York: United Nations Department of Public Information, 2001), Article 1, para. 1.

[9] Ibid.

[10] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970. General Assembly resolution 2625 (XXV). Resolutions adopted by the United Nations General Assembly at its twenty-fifth session. Official records, supplement No. 28 (A/8028), p. 153.

[11] Ibid.

[12] Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations, General Assembly resolution 42/22 of 18 November 1987. *Official Records of the General Assembly, Forty-second Session, Supplement No. 41* (A/42/41), p. 403.

use of force that have been incorporated in the United Nations Charter reflect customary international law. The same holds true for the Court's determination of the illegality of territorial acquisition resulting from the threat or use of force.[13] This rule prohibiting the use of force is a conspicuous example of a peremptory norm of international law (*jus cogens*), as defined in article 53 of the Vienna Convention on the Law of Treaties.[14]

The sole exception to this rule is the right of self-defence under Article 51 of the United Nations Charter. Bearing in mind the arguments put forward by the Armenian authorities on this issue, it is important to note that the beneficiaries of this rule are States. As pointed out by the International Court of Justice in its advisory opinion regarding the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, "Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State."[15] The entity established on the occupied territory of Azerbaijan by Armenia and rendered subservient to its will is not a State and cannot therefore invoke the right of self-defence.

This understanding is reflected in the corresponding resolutions of the Security Council, adopted in 1993 following the armed seizure of Azerbaijani territory. The resolutions recognize that the Nagorny Karabakh region belongs to Azerbaijan and reaffirm the sovereignty and territorial integrity of the Republic of Azerbaijan, the inviolability of its international borders and the inadmissibility of the use of force for the acquisition of territory. The resolutions demand the immediate cessation of all hostilities and the immediate, complete and unconditional withdrawal of the occupying forces from all occupied regions of the Republic of Azerbaijan and, in this context, call for the restoration of economic, transport and energy links in the region and for measures to assist refugees and displaced persons to return to their homes. In this light it is clear that the actions of the Armenian authorities can only be viewed as a violation of the peremptory norms of international law.

Regarding the issue of Armenia's role in the occupation of Azerbaijani territory

It cannot be denied that the policy pursued by Armenia in the occupied territories of Azerbaijan differs little from comparable activities carried out by occupying countries in other areas of the world. Considerations of time and geographical conditions do not substantially alter the methods employed in the occupation.

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[13] *Military and Paramilitary Activities in and against Nicaragua case* (*Nicaragua v. United States of America*), Judgment of 27 June 1986, *I.C.J. Reports 1986*, paras. 188 and 190; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Advisory Opinion of 9 July 2004, *I.C.J. Reports 2004*, para. 87.

[14] Vienna Convention on the Law of Treaties, 22 May 1969. For text, see Ian Brownlie (ed.), *Basic Documents in International Law* (Oxford: Oxford University Press, 5th ed., 2002), pp. 270-297, at p. 285. See also *Military and Paramilitary Activities in and against Nicaragua case* (*Nicaragua v. United States of America*) (Merits), para. 190; Articles on Responsibility of States for Internationally Wrongful Acts. Annex to General Assembly resolution 56/83 of 12 December 2001, article 41, para. 2; Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 6th ed., 2003), pp. 488-489.

[15] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, para. 139.

There have been numerous instances in history of States arguing that situations in which their armed forces have become embroiled do not constitute a military occupation or that, at the very least, are substantially different from the notion of occupation as defined in the 1907 Hague Regulations respecting the Laws and Customs of War on Land[16] and the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.[17]

In addition, the occupiers often disguise their own role in the forcible seizure of the territory of another State by setting up quasi-independent puppet regimes in the occupied territories.[18]

At the same time, the occupying Power generally endeavours to lend its actions a semblance of legality and to confer an appearance of independence on the entities created through those actions, entities that, more often than not, have been formed with the collaboration of certain elements of the population of the occupied country. It is clear, however, that to all intents and purposes they are always subject to the will of the occupying Power.[19] Sometimes actions of this kind are accompanied by attempts to endow the subordinate regimes set up in the occupied territories with a respectable image and to foster the impression that they espouse democratic values.

The features enumerated above are all evidenced in the policies and practices followed by Armenia in the occupied territories of Azerbaijan. Armenia denies both that there is any occupation within the meaning of international law and that it has anything to do with controlling these territories. Thus in a recent interview Prime Minister Serzh Sargsyan claimed once again that only volunteers had fought for Nagorny Karabakh. At the same time, Armenia, in his words, acted as "guarantor of the security of Nagorny Karabakh", prepared to intervene immediately in the event of the outbreak of a new war.[20] The question of Armenia providing guarantees is also mentioned in the country's national security strategy of 7 February 2007.[21] No explanation is provided, however, of how these guarantees, which affect a portion of Azerbaijan's territory, fit with international law.

In addition, the authorities in Yerevan are trying to give the puppet regime they set up in the occupied territories the appearance of legitimacy, independence and

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[16] Annex to the 1907 Hague Convention IV respecting the Laws and Customs of War on Land: Regulations respecting the Laws and Customs of War on Land, 18 October 1907. For text, see Adam Roberts and Richard Guelff (eds.), *Documents on the Laws of War* (Oxford: Oxford University Press, 3rd ed., 2003), pp. 73-84. Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949. For text, see Adam Roberts and Richard Guelff (eds.), pp. 299-369.

[17] Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949. For text, see Adam Roberts and Richard Guelff (eds.), pp. 299-369.

[18] Adam Roberts, "Transformative military occupation: applying the laws of war and human rights", see website http://ccw.politics.ox.ac.uk/publications/roberts_militaryoccupation.pdf.

[19] Jean Pictet (gen. ed.), International Committee of the Red Cross, Commentary on the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva, 1958), p. 273.

[20] *Caucasus Context* (2007), vol. 4, issue 1, pp. 43-44. See also the message by the Armenian Prime Minister Serzh Sargsyan of 1 September 2007 on the occasion of the "sixteenth anniversary of the independence of the Republic of Nagorny Karabakh". "Hayinfo" website: www.hayinfo.ru/page_rev.php?tb_id=18&sub_id=1&id=18956.

[21] National security strategy of the Republic of Armenia of 7 February 2007, chapter III, see website of the Ministry of Defence of Armenia www.mil.am/eng/?page=49.

democracy. In the words of the Armenian Prime Minister, "the young Republic of Nagorny Karabakh is today taking mature strides towards the formation of statehood and the development of democracy".[22]

It is no secret, however, that democracy cannot be propagated by the sword, and the holding of multiparty elections is not in itself proof of pluralism or the absence of authoritarianism.[23] Generally speaking, however, such attempts to disguise aggression against a neighbouring State are unlikely to be taken seriously, given the incontrovertible evidence of a situation that is the diametric opposite.

In addition to the facts at the disposal of the Azerbaijani authorities attesting to the direct involvement of the Armenian armed forces in the military hostilities against Azerbaijan and the presence of these forces in the occupied territories — issues which merit a separate and careful investigation — the assessment of Armenia's role given by independent observers is also completely unequivocal.

As the PACE rapporteur David Atkinson pointed out, "Armenians from Armenia had participated in the armed fighting over the Nagorno-Karabakh region besides local Armenians from within Azerbaijan. Today, Armenia has soldiers stationed in the Nagorno-Karabakh region and the surrounding districts, people in the region have passports of Armenia, and the Armenian government transfers large budgetary resources to this area".[24]

This view is corroborated by other sources as well. For example, according to the findings of the International Crisis Group, "[t]he highly trained and equipped Nagorno-Karabakh Defence Army is primarily a ground force, for which Armenia provides much of the backbone". According to estimates by this non-governmental organization, the Armenian military presence in the occupied territories of Azerbaijan consists of some 10,000 soldiers from Armenia. Attention is also drawn to reports that many conscripts and contracted soldiers from Armenia are forcibly sent to serve in Nagorny Karabakh as part of their military service, and not as volunteers, as maintained by the Armenian authorities. The Crisis Group states: "There is a high degree of integration between the forces of Armenia and Nagorno-Karabakh. Senior Armenian authorities admit they give substantial equipment and weaponry. Nagorno-Karabakh authorities also acknowledge that Armenian officers assist with training."[25]

In its final report on the outcome of the presidential elections in Armenia in 1998, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) expresses its "extreme concern that one of the mobile boxes has crossed the national borders of the Republic of Armenia to collect votes of Armenian soldiers posted abroad (Kelbajar) [in Azerbaijan]".[26]

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[22] Message by Serzh Sargsyan, Prime Minister of Armenia, of 1 September 2007.

[23] Adam Roberts, "Transformative military occupation: applying the laws of war and human rights".

[24] Report of the Parliamentary Affairs Committee of the Parliamentary Assembly of the Council of Europe. Document 10364, 29 November 2004. Explanatory memorandum by the Rapporteur, para. 6.

[25] International Crisis Group, "Nagorno-Karabakh: Viewing the conflict from the ground". Europe Report No. 166, 14 September 2005, pp. 9 and 10.

[26] OSCE/ODIHR Final Report of 9 April 1998, see OSCE website: http://www.osce.org/documents/odihr/1998/04/1215_en.pdf.

The Human Rights Watch/Helsinki report entitled "Seven years of conflict in Nagorno Karabakh", prepared in 1994 following a visit to the region — including the area of hostilities — by representatives of this human rights organization, states outright that the available evidence outweighs the Armenian authorities' denials. Adducing a wealth of facts based both on their own observations and on interviews with soldiers from the Armenian armed forces conducted during their visit to Nagorny Karabakh, the report's authors unequivocally conclude: "As a matter of law, Armenian army troop involvement in Azerbaijan makes Armenia a party to the conflict and makes the war an international armed conflict, as between the government of Armenia and Azerbaijan."[27]

In addition, the economy of Nagorny Karabakh is closely tied to Armenia and, to a large extent, depends on its financial infusions. As noted by the Crisis Group, "State loans" provided by Armenia since 1993 constituted 67.3 per cent of Nagorny Karabakh's budget in 2001 and 56.9 per cent in 2004. To date, nothing has been repaid against these loans. Moreover, "[a]ll transactions are done via Armenia, and products produced in Nagorno-Karabakh often are labelled 'made in Armenia' for export".[28]

Resolution 1416 (2005) adopted on 25 January 2005 by the Parliamentary Assembly of the Council of Europe acknowledges the continued occupation of considerable parts of the territory of Azerbaijan and the conduct of ethnic cleansing. The Assembly also draws attention to Armenia's obligations under international law and points out "that the occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe".[29] The resolution also contains an appeal for compliance with Security Council resolutions, in particular, by withdrawing military forces from any occupied territories.[30]

Accordingly, in view of Armenia's involvement in it, the conflict falls within the purview of international law and, in particular, the principle of the territorial integrity of States. International practice demonstrates that there is no legal foundation to irredentist claims, which all too often are based on the ethnic affinity between the population of a parent country and the inhabitants of a territory which has separated from it. The irredentist nature of the Armenian Azerbaijani conflict and the application to it of international law are also reaffirmed, inter alia, in the Security Council resolutions on the conflict. While these resolutions may not directly invoke the responsibility of Armenia, they do nonetheless contain a number of telling phrases, such as the "inadmissibility of the use of force for the acquisition of territory" and "occupied territories", which are generally used in connection with international armed conflicts. Thus Adam Roberts stresses, with reference to the principles of treaties and other legal texts on the occupation, that "an occupation is essentially of an international character".[31]

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[27] Human Rights Watch/Helsinki, "Seven years of conflict in Nagorno-Karabakh" (1994), pp. 67-73.

[28] International Crisis Group, "Nagorno-Karabakh: Viewing the conflict from the ground", pp. 12 and 13.

[29] PACE resolution 1416 (2005), entitled "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference", 15 January 2005, para. 2.

[30] Ibid., para. 3.

[31] Adam Roberts, "What is a military occupation?", 55 *British Yearbook of International Law* (1985), pp. 249-305, at p. 255.

The situation in the occupied territories of Azerbaijan on the agenda of the United Nations

It is clear that Armenia is seeking to achieve a transfer of sovereignty over Azerbaijani territories that it seized through military force and in which it has carried out ethnic cleansing. As there is no likelihood that such a transfer will be agreed to by Azerbaijan, whose officials have repeatedly stated that national territory cannot be a subject of compromise,[32] the one hope remaining for Armenia is to solve the problem outside a legal framework, namely by bringing about a situation in which recognition of a fait accompli is inevitable. These plans are being implemented through efforts to alter the demographic composition of the population in the occupied territories and prevent a return to the pre-war situation.

In a letter dated 11 November 2004 from the Minister for Foreign Affairs of the Republic of Azerbaijan addressed to the Secretary-General of the United Nations attention is drawn to Armenia's concerted efforts to transfer its population into the occupied territories, the exploitation of Azerbaijan's natural resources and the destruction and appropriation of its historical and cultural heritage, as well as other illegal activities carried out to consolidate the status quo of the occupation and to prevent the expelled Azerbaijani population from returning to their places of origin, thereby imposing a fait accompli.[33]

Deeply concerned by the far-reaching implications of these activities, Azerbaijan requested that the situation in its occupied territories should be addressed within the framework of the United Nations General Assembly. Accordingly, on 29 October 2004 the General Assembly decided to include in its agenda the item entitled "The situation in the occupied territories of Azerbaijan".[34] This item was considered on 23 November 2004 during the fifty-ninth session of the Assembly.[35]

A fact-finding mission of the Organization for Security and Cooperation in Europe (OSCE) visited the occupied territories of Azerbaijan from 30 January to 5 February 2005. On the basis of material provided by Azerbaijan and obtained during an investigation of the situation on the ground, the mission produced a detailed report which confirmed the facts of the settlement of the occupied territories.[36]

The following year was marked by further escalation of the situation in the occupied territories of Azerbaijan. From mid-May 2006, a portion of these

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[32] See, for example, Elmar Mammadyarov, *Towards peace in the Nagorny Karabakh region of the Republic of Azerbaijan through reintegration and cooperation*, 17 Accord (2005), pp. 18-19.

[33] Letter dated 11 November 2004 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the General Assembly, transmitting a letter dated 11 November 2004 from the Minister for Foreign Affairs of the Republic of Azerbaijan regarding the illegal activities carried out in the occupied territories of the Republic of Azerbaijan and providing information on the transfer of population into the occupied territories of Azerbaijan. United Nations document A/59/568.

[34] Forty-sixth plenary meeting, 29 October 2004, A/59/PV.46.

[35] Sixtieth plenary meeting, 23 November 2004, A/59/PV.60.

[36] Letter dated 18 March 2005 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General. Annex II: Report of the OSCE fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh (A/59/747-S/2005/187).

territories along the line of contact was swept by large-scale fires, which caused significant harm to the environment and biodiversity in Azerbaijan. The Azerbaijani side stated that the magnitude and character of the fires and the way they had spread confirmed that they were of intentional and artificial origin.[37] Having considered the situation in the occupied territories of Azerbaijan, the United Nations General Assembly adopted at its sixtieth session the resolution submitted by Azerbaijan on the question. The resolution expressed serious concern about the fires in the affected territories and, inter alia, stressed the necessity to urgently conduct an environmental operation to suppress the fires and to overcome their detrimental consequences.[38]

On the basis of that resolution, the occupied territories were visited by an OSCE-led environmental assessment mission to the fire-affected territories in and around the Nagorno-Karabakh region from 2 to 13 October 2006. The mission concluded that "[t]he fires resulted in environmental and economic damages and threatened human health and security".[39]

A legal assessment of activities in the occupied territories of Azerbaijan

The policy being pursued by Armenia in the occupied territories of Azerbaijan, which is aimed at achieving a transfer of sovereignty over these territories, is well known in international practice. Such attempts have been made on more than one occasion in the past, leading the international community to draw up regulations to effectively counteract them.

International law is not applicable only to the inhabitants of the occupied territory; it also protects the separate existence of the State, its institutions and its laws.[40] International law also prohibits actions which are based solely on the military strength of the occupying Power and not on a sovereign decision by the occupied State.[41] A generally established rule, upheld by lawyers and confirmed on many occasions by the decisions of international and domestic courts, is that the occupation of a territory in time of war is temporary in nature and thereby does not entail a transfer of sovereignty. Provisions relating to occupation, in particular the relevant articles of the Hague Regulations concerning the Laws and Customs of War on Land and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, are premised on the short-lived nature of a situation of occupation and remain in force for the duration of a war, even in the event of a ceasefire or a truce. The occupation of a territory *jus in bello* does not entail the right to annex that

[37] Letter dated 28 July 2006 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, transmitting a letter dated 28 July 2006 from the Minister for Foreign Affairs of the Republic of Azerbaijan regarding the wide-scale fires in the occupied territories of Azerbaijan (A/60/963).

[38] General Assembly resolution 60/285 of 7 September 2006, entitled "The situation in the occupied territories of Azerbaijan".

[39] Letter dated 20 December 2006 from the Permanent Representative of Belgium to the United Nations addressed to the Secretary-General. Annex: OSCE-led environmental assessment mission to the fire-affected territories in and around the Nagorno-Karabakh region. Report to the OSCE Chairman-in-Office from the Coordinator of OSCE Economic and Environmental Activities. United Nations document A/61/696.

[40] Jean Pictet (gen. ed.), p. 273.

[41] Ibid.

territory, since *jus contra bellum* forbids any seizure of territory based on the use of force.[42]

According to the traditional concept of occupation (article 43 of the Hague Regulations concerning the Laws and Customs of War on Land), the occupying authority must be considered as merely being a de facto administrator.[43] Furthermore, occupants should use their powers only for the immediate needs of administration and not for long-term policy changes.[44] Therefore, the occupying Power is obliged to respect the laws of the occupied State unless "absolutely prevented" (article 43 of the Hague Regulations concerning the Laws and Customs of War on Land). In other words, the occupying authority is not entitled to modify the legislation in force, except in cases motivated by military necessity or maintenance of public order.[45]

As noted above, all of Armenia's hopes for the recognition of an eventual fait accompli, and thus of the transfer of sovereignty over the occupied territories of Azerbaijan, involve an altering of the demographic composition of the occupied territories and prevention of a return to the pre-war situation. Indeed, the available information shows that Armenia has pursued a policy and developed practices that call for the establishment of settlements in the occupied Azerbaijani territories. There have been reports of a programme called "Return to Artsax" whose purpose is to artificially increase the Armenian population in the occupied Azerbaijani territories to 300,000 people by 2010. A working group set up to implement this resettlement programme under the leadership of the Prime Minister of Armenia includes both Armenian officials and representatives of non-governmental organizations operating in Yerevan.[46]

During the working visit to Nagorny Karabakh on 2 and 3 September 2000 of Andranik Margaryan, the former Prime Minister of Armenia, an agreement was concluded between the latter and the representative of the subordinate regime in the occupied territories which also includes provisions on the transfer of population to the occupied territories of Azerbaijan.[47] In an interview on 18 December 2003 the Prime Minister confirmed that "Armenia and NKR are within the common economic space" and that their "main purpose is the settlement of NKR and development of its investment field by means of creating the favourable regime for economic subjects".[48]

It should be noted in that connection that the sixth paragraph of article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War prohibits transfers of population to occupied territory. State practice has made that provision one of the norms of customary international law applied in cases of

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[42] Eric David, *Principes de droit des conflits armés* (*Principles of the Law of Armed Conflicts*), (Moscow: MKKK, 2000), pp. 376-378; Jean Pictet (gen. ed.), p. 275.

[43] Jean Pictet (gen. ed.), p. 273.

[44] See, for example, *Thawing a Frozen Conflict: Legal Aspects of the Separatist Crisis in Moldova — A Report from the Association of the Bar of the City of New York*, p. 69.

[45] Eric David, p. 381.

[46] See United Nations documents A/59/568 and A/59/720-S/2005/132.

[47] See the "Noyan Tapan" report dated 5 September 2000 and the "Mediamaks" report dated 6 September 2000.

[48] See websites www.gov.am/ruversion/premier_2/print.html?=299&url and http://www.menq.am/pls/dbms/mnp.show_npitem?pnp=128&pfile=359977&pnew=y&plgg=3.

international armed conflict.[49] The provision was intended to prevent a practice adopted during the Second World War by certain States, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they had claimed, to colonize those territories.[50] At the Trial of the Major War Criminals before the International Military Tribunal in Nuremberg in 1946, the Tribunal found two of the defendants guilty of attempting to "Germanize" occupied territories.[51]

The legislation and military regulations and codes of many States, including Armenia, include provisions prohibiting a party to a conflict from deporting or transferring part of its population to territory under its occupation. Official announcements and practice reflected in accounts also confirm the prohibition on transferring civilian population to occupied territory.[52]

Attempts to change the demographic composition of the population of occupied territory have been condemned by the United Nations Security Council,[53] the United Nations General Assembly,[54] the United Nations Commission on Human Rights[55] and other international bodies.

The International Committee of the Red Cross (ICRC), in its verbal note of 10 November 2000 addressed to the Permanent Mission of Azerbaijan to the United Nations Office and other international organizations at Geneva, shared "the concern ... as regards the 'cooperation agreement' between Armenia and Nagorny Karabakh whereby, according to the 'Noyan-Topan' news agency, there will be a sharp increase in the population of Nagorny Karabakh ...". In this regard, ICRC made it clear that "it ... endeavours to direct its humanitarian assistance in a way that does not help to consolidate territorial gains by one party to a conflict and that will not encourage resettlement which could be an obstacle to the return of forcibly displaced persons to their homes".

In their recommendations, based on the conclusions contained in the report of the OSCE fact-finding mission on illegal settlement, the Co-Chairs of the OSCE Minsk Group "discouraged any further settlement of the occupied territories" and urged the parties to "accelerate negotiations towards a political settlement in order, inter alia, to address the problem of the settlers and to avoid changes in the demographic structure of the region". The Co-Chairs pointed out in particular that

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[49] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (Cambridge: Cambridge University Press, 2005), vol. I: Rules, p. 462.

[50] Jean Pictet (gen. ed.), p. 283.

[51] Jean-Marie Henckaerts and Louise Doswald-Beck, p. 463.

[52] Ibid., p. 462.

[53] See, for example, Security Council resolutions 446 of 22 March 1979; 452 of 20 July 1979; 476 of 30 June 1980; 465 of 1 March 1980; 677 of 28 November 1990; 752 of 15 May 1992 and 787 of 16 November 1992.

[54] See, for example, General Assembly resolutions 36/147 of 16 December 1981; 37/88 C of 10 December 1982; 38/79 D of 15 December 1983; 39/95 D of 14 December 1984; 40/161 D of 16 December 1985 and 54/78 of 22 February 2000.

[55] See, for example, resolution 2001/7, of 18 April 2001, of the United Nations Commission on Human Rights. See also the report of the Special Rapporteur of the United Nations Commission on Human Rights Subcommission on Prevention of Discrimination and Protection of Minorities entitled *Human rights and population transfer*, United Nations document E/CN.4/Sub.2/1997/23, p. 19, para. 65.

"prolonged continuation of this situation could lead to a fait accompli that would seriously complicate the peace process".[56]

In addition, Armenia, as the occupying Power, is aiming to consolidate the results of ethnic cleansing and denying the right of return to those forced to resettle by encouraging various forms of economic activity in the occupied territories, directly affecting property rights. It should be recalled in this connection that international law, in particular the Hague provisions concerning the laws and customs of war on land (articles 46, 52, 53, 55 and 56) and the Geneva Convention relative to the Protection of Civilian Persons in Time of War (articles 53 and 147), imposes on the occupying Power an obligation to respect property located in occupied territory. That rule applies both to the physical integrity and to the ownership of such property.[57] Specific provisions of the Charter of the International Military Tribunal at Nuremberg (article 6 (b))[58] and the Rome Statute of the International Criminal Court (article 8) also cover protection of property.[59] Undoubtedly, the applicable instruments of international law should also include human rights conventions for which an occupying Power holds the primary responsibility for fulfilment in occupied territories.[60]

From a legal point of view, the previous owners of property located in occupied territory are legitimate. As a result, any economic activity undertaken by natural or legal persons jointly with an occupying Power or under the tutelage of that Power's local authorities is illegal and performed at their own risk. There is no point in hoping that such economic activity will be sanctioned after the final resolution of the conflict or that those involved will be able to escape responsibility. It goes without saying that all agreements which provide the basis for altering the economic value of property will be challenged and abrogated once Azerbaijani sovereignty over the occupied territories is restored. Advocating otherwise would be tantamount to justifying the crimes committed and violating the peremptory norms of international law.

Neutral States which fail to take all necessary and feasible action to prevent their nationals from seizing property in occupied territories are considered to be providing indirect assistance for the occupier's illegal activities and are therefore to be considered accountable in ways which could include being forced to provide compensation for the injury inflicted.[61]

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[56] Letter dated 18 March 2005 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General, Annex I, "Letter of the OSCE Minsk Group Co-Chairs to the OSCE Permanent Council on the OSCE Minsk Group fact-finding mission to the occupied territories of Azerbaijan surrounding Nagorno-Karabakh", United Nations document A/59/747-S/2005/187.

[57] Eric David, p. 389

[58] Judgment (extracts). *The Charter Provisions* see text in Adam Roberts and Richard Guelff (eds.), pp. 177-178, at p. 177.

[59] Rome Statute of the International Criminal Court (Extract), 17 July 1988. See text in Adam Roberts and Richard Guelff (eds.), pp. 667-697, at p. 676, article 8(2)(a)(iv).

[60] See, for example, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, paras. 102-113.

[61] Loukis G. Loucaides, "The Protection of the Right to Property in Occupied Territories", *International and Comparative Law Quarterly 2004*, 53(3), pp. 677-690, at p. 686.

Responsibility under international law

As stated in the Articles on Responsibility of States for Internationally Wrongful Acts developed by the International Law Commission, "[e]very internationally wrongful act of a State entails the international responsibility of that State". Such an act of a State is deemed to occur when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.[62] As early as 1928, in its ruling in the *Factory at Chorzów* case, the Permanent Court of International Justice described the principle of international responsibility as one of the principles of international law and, furthermore, of the general understanding of the law.[63]

The principle of responsibility is closely bound up with the principle of the conscientious fulfilment of obligations under international law (*pacta sunt servanda*). It is important to note that a breach that is of an ongoing nature relates to the entire period over which the act was performed and remains at variance with obligations under international law. Furthermore, in the event that a State breaches its obligations under international law through a series of wrongful acts or omissions, the breach extends over the entire period starting with the first of the acts or omissions in the series and continues for as long as they are repeated and remain at variance with the State's obligations under international law.[64]

The responsibility of the State is incurred for any act or omission of its authorities which occurs either within or beyond its national borders. An internationally wrongful act is also perpetrated by the organs of a State or by its agents, acting *ultra vires* or contrary to instructions.[65]

As noted above, there is a convincing body of evidence attesting to the use of force by Armenia against the territorial inviolability of Azerbaijan and the exercise by Armenia of effective overall military and political control of the occupied territories of Azerbaijan. This control is applied both by the armed forces of Armenia and through the puppet regime set up by it in the occupied territory, which, by performing the functions of a local administration, owes its existence to the support, in military and other terms, of the occupying State.

Armenia's responsibility arises as the consequence both of the internationally wrongful acts of its own organs and agents in the occupied territories and the

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[62] Articles on Responsibility of States for Internationally Wrongful Acts, arts. 1 and 2. See also *Ilaşcu and others v. Moldova and Russia*, ECHR Judgment of 8 July 2004, para. 314, EHCR Portal, UUDOC Collection.

[63] *Factory at Chorzów (Claim for Indemnity) Case (Germany v. Poland)* (Merits), P.C.I.J. Series A (1928) No. 1, Permanent Court of International Justice, see in Martin Dixon and Robert McCorquodale, *Cases and Materials on International Law* (Oxford: Oxford University Press, 3rd ed., 2003), p. 404. See also I. I. Lukashuk, *Mezhdunarodnoe pravo. Osobennaya chast'* (Moscow: Walters Kluwer, 3rd ed., 2007), p. 376.

[64] *Ilaşcu and others v. Moldova and Russia*, paras. 320-321. See also Articles on Responsibility of States for Internationally Wrongful Acts, art. 14, para. 2, and art. 15, para. 2.

[65] *Ilaşcu and others v. Moldova and Russia*, para. 319. See also *Ireland v. United Kingdom*, ECHR Judgment of 18 January 1978, para. 159, ECHR Portal, HUDOC Collection; Articles on Responsibility of States for Internationally Wrongful Acts, article 7.

activities of its local administration. Furthermore, there is responsibility even in the event of consent to, or tacit approval of, the actions of this administration.[66]

Armenia's international responsibility, which is incurred by its internationally wrongful acts, involves legal consequences manifested in the obligation to cease these acts, to offer appropriate assurances and guarantees that they will not recur and to provide full reparation for injury in the form of restitution, compensation and satisfaction, either singly or in combination.[67]

As stated in the commentary to the draft Articles on Responsibility of States for Internationally Wrongful Acts, "[e]very State, by virtue of its membership in the international community, has a legal interest in the protection of certain basic rights and the fulfilment of certain essential obligations".[68] A significant role in securing recognition of this principle was played by the decision of the International Court of Justice in the *Barcelona Traction* case. This identified the existence of a special category of obligations — obligations towards the international community as a whole. The International Court of Justice states: "By their very nature the former [the obligations of a State towards the international community as a whole] are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*."[69] Accordingly, serious breaches of obligations flowing from peremptory norms of general international law may have additional consequences affecting not only the State bearing the responsibility, but also all other States. Inasmuch as all States have a legal interest, they are all entitled to invoke the responsibility of the State which has breached its responsibility *erga omnes*. Furthermore, States must cooperate with a view to ending such breaches by lawful means.[70]

It is generally recognized that the category of serious breaches of obligations under peremptory norms of general international law includes, among others, aggression, genocide and racial discrimination.[71]

As stated in the Articles on Responsibility of States for Internationally Wrongful Acts, "No State shall recognize as lawful a situation created by a serious breach [of obligations under peremptory norms of general international law] ..., nor render aid or assistance in maintaining that situation."[72]

Alongside Armenia's responsibility as the State which unleashed war against Azerbaijan, under the usual norms and treaty rules of international criminal law,

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[66] See *Louizidou v. Turkey*, EHCR Judgment of 23 March 1995, para. 62; *Louizidou v. Turkey*, EHCR Judgment of 18 December 1996, para. 52; *Cyprus v. Turkey*, ECHR Judgment of 10 May 2001, para. 77; *Ilaşcu and others v. Moldova and Russia*, paras. 314-319, ECHR Portal, HUDOC Collection.

[67] See Articles on Responsibility of States for Internationally Wrongful Acts, arts. 28, 30, 31 and 34-37.

[68] Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), comment to art. 1, para. 4.

[69] *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, I.C.J. Judgment of 5 February 1970, I.C.J. Reports 1970, para. 33. See also I. I. Lukashuk, pp. 379-380.

[70] I. I. Lukashuk, pp. 379-380, 394-396; Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), commentary to art. 1, para. 4.

[71] Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries (2001), commentary to art. 40, para. 4.

[72] See Articles on Responsibility of States for Internationally Wrongful Acts, art. 41.

certain acts perpetrated in the context of an armed conflict are viewed as international criminal offences and responsibility for them is borne on an individual basis by those participating in the said acts, their accomplices and accessories.

A distinction should be drawn between the two stages in the perpetration during a conflict of the most serious international offences such as genocide, crimes against humanity and military crimes. The first stage can be sited during the active military campaign, which had such tragic consequences for the civilian Azerbaijani population. The events which took place at that time were sufficiently well covered by international organizations, non-governmental human rights bodies and the media. The second stage relates to the situation in the occupied territories of Azerbaijan. Concern about the extent to which the rules of international law were being observed in those territories was heightened when an item on the issue was placed on the agenda of the United Nations General Assembly and when the resolution on the situation in the occupied territories of Azerbaijan was adopted at the Assembly's sixtieth session.

At the same time, when considering this issue and elaborating measures to prevent unlawful activities in the occupied Azerbaijani territories, it is essential that the situation be appraised from the standpoint of international law. Thus, measures undertaken by the occupying Power to change the demographic composition of the population of the occupied territories, including by moving, both directly and indirectly, civilians into the occupied territory,[73] the destruction or appropriation of State and private property in the occupied territory,[74] attacks against cultural properties[75] and effects on the environment,[76] are categorized as military offences — in other words, serious breaches of the law of armed conflicts.

In addition, depending on the specific circumstances, a single action may constitute a number of offences. Thus, the military crimes committed by the Armenians during the conflict in some cases compound other crimes of war, such as genocide and crimes against humanity, or are coterminous with them. For example, the massacre in February 1992 of the civilian Azerbaijani population of the town of Xocali, which constituted a serious breach of the law of armed conflicts, may also be categorized as genocide.[77]

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[73] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. For text see Adam Roberts and Richard Guelff (eds.), pp. 419-479, at p. 471, Article 85 (4) (a); Rome Statute of the International Criminal Court, 17 July 1998, p. 677, Article 8 (2) (b) (viii).

[74] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, p. 352, Article 147; Rome Statute of the International Criminal Court, 17 July 1998, pp. 676-677, Article 8 (2) (a) (iv).

[75] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, p. 471, Article 85 (4) (d); Rome Statute of the International Criminal Court, 17 July 1998, at p. 677, Article 8 (2) (b) (ix).

[76] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, p. 352, Article 147; Rome Statute of the International Criminal Court, 17 July 1998, p. 677, Article 8 (2) (b) (xiii).

[77] Convention on the Prevention and Punishment of the Crime of Genocide, General Assembly resolution 260 A (III), 9 December 1948. For text, see United Nations Centre for Human Rights, *Human Rights: A Compilation of International Instruments*, ST/HR/1/Rev.5, vol. 1 (Second Part), New York and Geneva, United Nations 1994, pp. 673-677.

The international community, acting chiefly through the United Nations, has proclaimed and set down in international instruments a compendium of fundamental values, such as peace and respect for human rights. The consensus on them was reflected in the adoption in 1948 of the Universal Declaration of Human Rights, according to which "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". At the same time, the Universal Declaration emphasizes that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind".[78]

Regrettably, even some 60 years after the adoption of the Universal Declaration of Human Rights, the conspicuous "silence" in certain international criminal proceedings serves to accentuate a deficiency characteristic of the international community today: the gap between the theoretical values of law and harsh reality, which impedes the application in practice of the rich potential of international law standards. At the same time, if one is to be consistent in upholding universally accepted values, it is essential to take steps to inhibit any brazen attempt to reject these and not to permit lawlessness, including by prosecuting their supposed perpetrators.[79] It is clear that there can be no long-term and sustainable peace without justice and respect for human dignity, rights and freedoms.

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[78] Universal Declaration of Human Rights, General Assembly res. 217 A (III), 10 December 1948. For text see United Nations Centre for Human Rights, *Human Rights: A Compilation of International Instruments*, ST/HR/1/Rev.5, vol. I (First Part), New York and Geneva, United Nations, pp. 1-7, at p. 1.

[79] See, for example, Antonio Cassese, *International Criminal Law* (Oxford: Oxford University Press, 2003), p. 446.